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[APPELLATE CRIMINAL JURISDICTION]

GERAHTY, J.

August 9, 1934.

REX ..... Appellant.

vs.

SALAMA & ANOR..... Respondents.

[SINGAPORE MAGISTRATE'S APPEAL No. 27 of 1934]

Sale of premium bonds—redemption by drawing of lots—with possibility of drawing a prize—"lottery"—Ordinance No. 45 (Common Gaming Houses) S.4(a), (c), (f).

The Respondents were charged in the Police Court with assisting in the carrying on of a public lottery namely Credit Foncier Egyptian Bonds and two other charges. These premium bonds were of a face value of £10-0-0 each and were sold at the price of £19-10-0, payable by monthly instalments. Interest is payable at 3 p.c. on the face value. Paragraph 9 of the prospectus provided that every month until 1961 twenty six numbers will be drawn, one of which is to be redeemed at £2,000/- while the remaining numbers will be redeemed for £40/-. During the months of May and October in each year the first prize will be £4,000. Paragraph 10 of the prospectus held out to each subscriber the assurance that the purchaser had every chance eventually of being one of the fortunate winners of prizes.

Held, by Geraghty, J. reversing the order of the Magistrate that the scheme above described was a "lottery" within the meaning of Section 4 of Ordinance No. 45 (Common Gaming Houses).

This was an appeal preferred by the Crown against the order of Mr. J. M. Brander, the Singapore Third Police Magistrate, discharging the accused respondents, who had been charged under section 4 (a), (c), (f) of Ordinance No. 45 (Common Gaming Houses) with (1) using a place to wit No. 1 Capitol Building Singapore as a Common Gaming House, (2) assisting in the carrying on of a public lottery to wit Credit Foncier Egyptian Bonds and (3) publishing an announcement with reference to the said public lottery.

The facts of the case appear as summarised in the headnote above.

Worley, Deputy Public Prosecutor, for the Crown (Appellant).

Magistrate misdirected himself. Definition of lottery, Section 2 Ord. 45. A lottery is "not simply a scheme, method or device for the distribution of money or money's worth to be determined by chance or lot." A scheme of investment which offers a chance of a prize to be determined by lot is a lottery. In other words, you can have a lottery to which there are no blanks; everybody gets something and some get prizes. *R.* v. *Harris*, (1866) 10 Cox C.C.352; *Sykes* v. *Beadon*, (1879) 11 Ch.D. 170, Judgment of Jessel, M.R. at p. 190; *Howgate* v. *Ralph*, (1929) 141 L.T. 512. Each bond value Egypt £9.64 is redeemable at par at any time by drawing. The purchase price is £19.10.0, payment of which may be made by instalments. The purchaser receives no interest until the bond is fully paid up. Thereafter only 1½% not 3% on the capital invested as stated in the prospectus is received. Apart from the chance of getting a prize the scheme offers no attraction at all. *Re International Securities Corporation Ltd.*, (1908) 99 L.T 581; 24 T.L.R. 837. A foreign lottery need not be proved if the documents in circulation are *prima facie* lottery tickets. *Barker* v. *Wood*, (1932) 48 T.L.R. 402. Once a lottery is shown to exist every one concerned in it is liable. *Kerslake* v. *Knight*, (1925) 133 L.T. 606.

Knowles for the Respondents. The Common Gaming Houses Ordinance 45 is a highly penal statute interfering not only with the rights of the subject, but inflicting severe penalties. It is therefore subject to the rule of strict construction and no one must be brought within it that is not aimed at, and included not only by a reasonable interpretation of its provisions, but by the spirit and scope of the Enactment itself and its express language. *Maxwell*, Interpretation of Statutes, 7th Edition p. 227. A wager is not in itself illegal. *Ramloll Thackoorseydass & ors.*, 6 Moore 300; 13 Eng. Reps. 699. Such transactions may be illegal according to special statutes, but not contrary to the Lottery Acts. *O'Connor* v. *Bradshaw*, 20 L.J. Ex. 24. Even the distribution by lot may take a form not repugnant to law. *Braddell*, Common Gaming Houses, 2nd Edition p. 17 for instance, advances from a loan society, *Wallingford* v. *Directors of the Mutual Society*, (1880) L.R. 5 App. Cas. 685 or chit funds and tontine. *Shanmugam Mudaliar* v. *Kumaraswami Mudaliar*, (1925) I.L.R. 48 Mad. 661 (in which practically all the cases up to 1925 were considered). *Narayan Ayyangar* v. *Vellachami Ambalam*, 1927 I.L.R. 50 Mad. 696. A lottery within the meaning of the Ordinance must be proved. *Chan Chan Seng* v. *P.P.*, (1932) 1 Mal. L.J. 107. The bond scheme is only a form of investment.

The preamble of the Ordinance shows its scope. "An Ordinance to suppress Common Gaming Houses." This was never meant to include such transactions as insurance, the issue of bonds,—even though their redemption might be by lot—or other commercial transactions, or investments. *Rex* v. *Li Kim Poat*, (1933) 2 Mal. L.J. 164 and cases there cited or even gaming in private houses.

Even a society to carry on lotteries outside the jurisdiction in countries where this is not

illegal is not illegal according to English law. *McNee* v. *Persian Investment Corpn.*, 1890 L.R. 44 Ch. D. 306. The Credit Foncier Egyptian Bond is an investment, and a commercial undertaking quoted on the English, French, and Continental Exchanges, and whether it is a profitable one or not is beyond the purview of the Ordinance,

Worley in reply. In England and India there is no definition of a lottery; here we have one. In both countries Judges are free to construe the meaning of the word. Here we are bound by the definition given in the Ordinance and the decisions of other Courts are only applicable if in consonance with the definition of lottery as given in the local law. See the Judgment in *Ooi Tiong Ham's* case reported in (1933) S.S.L.R. 436.

Section 2 of the English Gaming Act, 1802 (42 Geo. III C. 119 S. 2) makes it an offence to keep an office or place for any game or lottery not authorised by law, while section 41 of the Lotterv Act, 1823 (4 Geo. IV C. 60) forbids the sale of tickets in an unauthorised lottery. The Legislature has authorised Treasury lottery and provided for the suppression of unauthorised lotteries. The cases should be considered in the light of these Statutes. In *Wallingford* v. *Mutual Society*, (*supra*), the scheme complained of was a tontine. It may not be a lottery within of was a tontine. It may not be a lottery within the definition in the local law. In *McNee* v. *Persian Investment Co., (supra)* there was no sale of the tickets in England; dealt with by subsequent legislation on the advertising of foreign lotteries. *Ramloll Thackoorseydass & ors. (supra)*, was decided on the ground that 8 & 9 Vict. C. 109 did not apply to India. As a result of this case such wagers were declared invalid by Act No. XXI of 1848. The other two Indian cases *Shanmugam Mudaliar* v. *Kumaraswami Mudaliar, (supra)* and *Narayan Iyyengar* v. *Vellachami Ambalam, (supra)* concern the management of tontines or "Kuthus." These decisions go further than *Wallingford* v. *Mutual Society*. Gour Penal Law of India, Vol. II, pp. 1444, 1449 and 1452. *Chan Chan Seng* v. *Public Prosecutor (supra)*, has no application as there the ticket was *prima facie* merely a ticket of admission to a tea-party and no evidence was adduced to prove any lottery.

Cur. Ad. Vult.

GERAHTY, J.—This is an appeal by the Crown against an order of acquittal recorded by the Magistrate under section 178(f) of the Criminal Procedure Code in the following circumstances.

The respondents were charged under Ordinance No. 45 (Common Gaming Houses) with (1) using certain premises as a common gaming house (section 4(a)), (2) assisting in the carrying on of a public lottery, namely Credit Foncier Egyptian Bonds, (section 4 (c)), and (3) publishing an announcement relating to a public lottery, namely the said Bonds (section 4(f)).

The learned Magistrate has found that the main purpose of the Credit Foncier is an investment and not a lottery.

It is urged by Mr. Worley, D.P.P., for the Crown that while there may be an element of investment in the scheme of Credit Foncier bonds yet it includes a "method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot" and as such falls within the definition of "lottery" as defined in section 2 of Ordinance No. 45.

For the respondents it is argued by Mr. Knowles that the scheme is merely a commercial transaction and contains only that element of chance common to most business transactions and that as such it does not fall within the purview of Ordinance No. 45.

Now what is the nature of the scheme? It is contained in (1) the Prospectus of Bonds which is in evidence as Exhibit "C" and which is the subject of the third charge, (2) the form of Contract, Exhibit "A", and (3) the form of Bond itself, Exhibit "K".

It is disclosed in evidence that 1000 copies of the Prospectus and 2000 copies of the contract forms were printed locally.

For the purpose of convenience I will quote figures in sterling.

The Prospectus offers to the public Credit Foncier Egyptain Bonds issued 1903—1953, with 3% yearly interest at a present purchase price of £19.10.0, payment being by way of monthly instalments.

The face value of the bonds is not disclosed in the Prospectus. On completion of payment the bonds are delivered to the purchaser, the vendors thereafter being declared to be exempted from further responsibility.

Until final payment the bonds are retained by the vendors.

Provision is made for redemption of bonds and for insurance against redemption of bonds where instalments have not been fully paid up, but the position is not, in my view, clear where a fully paid up bond is redeemed.

Up to this point the scheme as outlined in the Prospectus could not, I think, be denounced as a lottery, but now turn to paragraphs 9 and 10.

By paragraph 9 it is declared that every month until 1961 twenty-six numbers will be drawn, one of which is to be redeemed for £2,000 while the remaining 25 numbers will be redeemed for £40. During the months of May and October in each year the first prize will be £4,000.

Paragraph 10 of the Prospectus runs as follows:—

> "You have every chance eventually of being one of these fortunate winners, and if your number does not turn up this month, it is bound to turn up at a later month it is all one's luck and patience. Each month the number of Bonds grow less and less, and finally your number must be drawn sooner or later. You are losing nothing if your number is delayed in appearing, for in the meantime you are drawing 3% per annum."

The form of Contract reiterates in detail the conditions of sale outlined in the Prospectus.

Let us now turn to the terms of the bonds themselves; here we find that the face value of the bond is £10, the interest works out at 1½% and it is stated that the bonds are refundable at par by means of yearly drawings with prize drawings every month.

In passing I would state that I have difficulty in reconciling the terms of the Bond with the representations contained in the Prospectus.

Eliminating the possibility of drawing a prize, what attraction does this scheme offer by way of investment? Again, without the chance of winning a substantial prize would an ordinary prudent man invest his money in such an undertaking?

The answer to both questions is contained in the evidence of An Po Ghee and Chia Gim Chiu.

On the evidence before him I have to determine whether the Magistrate was correct in acquitting the respondents at the close of the case for the prosecution

In my view the learned Magistrate has misdirected himself as to the issue before him He states in his grounds of judgment that "It is certain that the Credit Foncier is not a game and whether it is *simply* a method or device for the distribution of money or money's worth to be determined by chance or lot was the question to be decided by the Court."

In my opinion the issue before him was whether this scheme included such a method or device and if it did, whether it is covered by the definition of "lottery" in section 2 of Ordinance No. 45.

I regret I am unable to agree with the learned Magistrate's conclusion that this scheme is an investment and not a lottery. In my view, while it purports to be an investment, its predominant feature is the inclusion of a method or device for the distribution of money or money's worth depending upon or to be determined by chance or lot, and as such the scheme as a whole is a lottery within the meaning of Ordinance No. 45.

I am of opinion that on the evidence the prosecution had discharged the onus upon it and that the Magistrate should have called upon the accused to enter upon their defence.

My view of the law is supported by a number of English authorities. I will mention three cases which serve to show the principles upon which the Courts act.

In *Reg.* v. *Harris*, 10 Cox's Cr. Law Cases 352, it was held that where subscribers to a scheme were induced to part with their money in the hope of obtaining not only their money or money's worth back, but something of much greater value, the right to which was to be ascertained by chance, was an illegal lottery within the statute.

Assuming then that in the present case the subscriber stands not to lose anything as represented in paragraph 10 of the prospectus, the scheme is, on this authority, none the less a lottery.

In *Sykes* v. *Beadon*, 1879 L.R. 11 Ch.D. 170, it was held by Jessel, M.R. at p. 190 that a subscription by a number of persons to a fund for the purpose of dividing that fund between them by chance and unequally is a lottery.

In *Re International Securities Corporation, Ltd.*, (1908) 99 L.T.R. 581, where a company was formed for the purpose of dealing in premium bonds, in some cases the bonds bearing a small rate of interest, in others the interest being added to the capital, and where all the bonds were to be drawn sooner or later, but the drawings were to extend over a period of 80 years, it was held that the premium bonds were within the Lottery Acts.

Mr. Knowles has cited *inter alia*, *Wallingford* v. *The Directors of the Mutual Society*, L.R. 5 A.C. 685; *O'Connor* v. *Bradshaw*, 20 L.J. Exch. 26; and *Macnee* v. *Persian Investment Corpn., Ltd.*, (1890) L.R. 44 Ch.D. 306; but these cases do not in my view in any way modify the principles which have been adopted by the Courts in determining what constitutes an illegal lottery.

He has also cited certain Indian cases but they are only authorities tending to show that where there is mutual benefit—where, for instance, an arrangement is made by which all in turn get a return of the amount of their contribution without risk or speculation—it has not the taint of a lottery. Such an arrangement, however, is in my view clearly distinguishable from that under review in this case.

I would add a brief comment on Mr. Knowles' submissions on the scope of Ordinance No. 45. I agree with his suggestion that the ordinance was never intended to include within the definition of "lottery" such commercial transactions as the business of insurance, building societies and like concerns, for there the principle on which such

businesses are run is one of mutual benefit unattended by the risk, speculation and uncertainty which make lotteries void, but I am unable to agree with him that the ordinance is not intended to cover cases where under the cloak of a commercial transaction or investment there exists a method or device for the distribution of money or money's worth by chance or lot. In England common gaming houses, common betting houses and lotteries are dealt with in separate statutes. The local ordinance is designed to suppress both common gaming houses and lotteries and includes in the former "any place kept or used for the purpose of a public lottery." The ordinance then goes further than the English Acts and expressly defines "lottery" as including "any game method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn, exercised or managed within or without the Colony."

It is difficult to conceive of a definition which could be framed in wider terms and it seems to me that the ordinance is clearly intended to strike at the mischief of any transaction or scheme which introduces an element of risk, speculation and uncertainty tending to financial loss to or may be the ruin of those who may thus be attracted to subscribe.

Mr. Knowles has submitted that if the Legislature wishes to suppress such transactions as the one in dispute special legislation for the purpose should be introduced. I am unable to subscribe to this view and I would state the position thus: if the Legislature did not contemplate the suppression of such transactions by Ordinance No. 45 then legislation would or should have been enacted to take such transactions out of the scope of that Ordinance which in my view so clearly embraces them.

The appeal will be allowed and the order of acquittal set aside with a direction to the Magistrate to re-open the proceedings and to call upon the respondents to enter upon their defence and in default of the respondents so entering upon their defence, with a direction to convict on such charges as the Magistrate may hold to have been otherwise substantiated by the evidence.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]
WHITLEY, J.
August 23, 1934.

MEENAMBAL (f) ..... **Plaintiff**

v.

TAN KEE CHONG ..... **Defendant**

[PENANG SUIT No. 233 of 1933]

Practice — attachment before judgment — order for attachment amended — jurisdiction to amend—seizure of attached property after judgment—conveyance of property to a third party after date of attachment but before judgment obtained—validity of conveyance—Civil Procedure Code, Ss. 639, 309, 588, 602, 619 and 632.

In a suit against the administrator of the Estate of a deceased debtor the plaintiff obtained an order to attach before judgment certain immoveable property standing in the name of the deceased. Another lot of land belonging to the deceased was subsequently discovered and, on the plaintiff's application, the Court made an order amending the previous order by including in the Schedule thereto the second lot of land. In December 1930 the amending Order was registered in the Registry of Deeds against the property thereby covered.

Judgment was entered for the plaintiff against the administrator of the deceased's estate in June, 1931. In the same month the plaintiff obtained an order attaching the deceased's interest in the said land. This order was also registered in July 1931. In April, 1931, however, the administrator had conveyed the land under attachment to the defendant. The plaintiff sought to have the conveyance set aside.

Held, that the Court had jurisdiction to amend the order for attachment and that accordingly the amending Order took precedence over any subsequent dealings with the property against which the order was registered.

Held, that a Writ of Seizure & Sale, so far as it concerns immoveable property, is executed by the Sheriff as soon as the order attaching the interest of the judgment debtor therein is registered and notice of registration given to him, and it is immaterial whether or not the seizure is completed by the sale of the property seized.

ACTION tried before Whitley, J. on the 1st and 2nd days of August, 1934.

de Buriatte (*P. Somasundrum* with him) for plaintiff.

Conaghan for defendant.

Cur. Ad. Vult.

WHITLEY, J.—The admitted facts in this case were shortly as follows:

The plaintiff is a Hindu woman the widow of a railway coolie and the defendant is a Government Pensioner. Both reside at Bukit Mertajam. The plaintiff deposited a sum of $1,600 with A.K.M. Kumarapa Chetty. He died in 1927 and in September, 1930, the amount due from his estate to the Plaintiff in respect of principal and interest was $2,183-75. She demanded payment without success and instructed her Solicitor Mr. Somasundrum to take proceedings. A Writ was issued and on the 8th September, 1930, she obtained an Order under section 689 of the Civil Procedure Code for attachment before Judgment of the immovable property of the firm as set out in the schedule to the Order. The Plaintiff's father subsequently discovered that the firm owned another piece of land namely Lot 324 Mukim 10 Central District Province Wellesley which was not included in that schedule and she thereupon applied for a further Order attaching this Lot, and on the 28th October, 1930, an Order was made amending the previous Order by adding this Lot to the